

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

JEREMY WILLIAM DEDEKER,

Petitioner,

v.

STUART SHERMAN,

Respondent.

No. 2:20-cv-2056-KJM-EFB P

FINDINGS AND RECOMMENDATIONS

Petitioner proceeds without counsel in this petition for writ of habeas corpus under 28 U.S.C. § 2254. Respondent moved to dismiss the petition for failure to state a claim and for potentially asserting a claim that had not been exhausted in state court. ECF No. 12. The gist of respondent's motion was that the petition failed to identify the basis for relief. *Id.* Petitioner's opposition clarified the grounds on which he seeks relief, and respondent now asserts that petitioner should be given an opportunity to amend the petition to clearly assert those grounds. ECF Nos. 20, 21. The court agrees and therefore recommends that the motion to dismiss be granted with leave to amend.

I. Background

Petitioner was sentenced to a determinate term of 12 years plus a consecutive indeterminate term of 40 years-to-life following his convictions for sexual offenses against a minor. He challenged his convictions through appeal and state collateral proceedings, and then

1 filed this petition. Although it is difficult to distill the precise nature of petitioner's claim, he has
2 framed it as follows:

3 No physical evidence only word of alleged victim who was coached by mother,
4 lead detective repeatedly could not remember during trial, prosecuting attorney
5 brought in after the fact who then left county after trial, police chief forced to
6 retire due to his statement of guilty until proven innocent as shown in newspaper
7 attached evidencing corruption on force, other cases with similar charges only
8 sentenced for much shorter terms, judge also retired.

9 ECF No. 1 at 5.

10 **II. The Motion to Dismiss**

11 Respondent argues that petitioner's statement of his claim fails to comply with Rule 2(c)
12 of the Rules Governing § 2254 Cases, because it fails to "specify all the grounds for relief
13 available to the petitioner" and "state the facts supporting each ground," as that rule requires.
14 ECF No. 12 at 2-3. Respondent further argues that, to the extent that the petition may be
15 construed to assert cognizable claims, those claims have not been presented to the California
16 Supreme Court. *Id.* at 4-5.

17 Petitioner's opposition presents claims of ineffective assistance of trial counsel that were
18 exhausted in state court proceedings. ECF No. 20. Respondent now asks that the motion to
19 dismiss be granted with leave to amend to allow petitioner to state these claims with the clarity
20 provided in his opposition to the motion to dismiss. ECF No. 21. The court agrees that dismissal
21 is appropriate due to the vagueness of petitioner's original allegations. *See Hendricks v. Vasquez*,
22 908 F.2d 490, 491 (9th Cir. 1990); Rule 4, Rules Governing Section 2254 Cases. Petitioner
23 should be provided leave to file an amended petition that states his claims with the clarity
24 contained in his opposition to the motion to dismiss.

25 **III. Conclusion and Recommendation**

26 Accordingly, it is hereby RECOMMENDED that the motion to dismiss (ECF No. 12) be
27 granted and that petitioner be granted thirty (30) days from the date of any order adopting these
28 recommendations to file an amended petition.

29 These findings and recommendations are submitted to the United States District Judge
30 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days

1 after being served with these findings and recommendations, any party may file written
2 objections with the court and serve a copy on all parties. Such a document should be captioned
3 "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections
4 within the specified time may waive the right to appeal the District Court's order. *Turner v.*
5 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

6 DATED: June 14, 2021.

7 
8 EDMUND F. BRENNAN
9 UNITED STATES MAGISTRATE JUDGE
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28